

DISABILITY INSURANCE PROGRAM
FREQUENTLY ASKED QUESTIONS (FAQ)

Section 5.0: Leave
(PREPARED FOR MERIT AGENCIES)

Disclaimer—

If there is any conflict in interpretation between the FAQs and the Short-Term Disability (STD) and Long-Term Disability (LTD) program contract provisions and existing law, the contract provisions and/or law govern.

Q 5.1 Use of Available Leave during Short-Term Disability (STD). Since Short-Term Disability (STD) will pay 75% of my base pay, can I use my accrued leave for the other 25%?

A 5.1 Employees are eligible to request to use available leave on a daily basis to bring their pay up to 100% of base pay during the time they are on STD. However, Family and Medical Leave (FMLA) rules on leave usage apply when the two leaves are running concurrently. (FAQ 5.11)

Q 5.2 Am I entitled to Holiday Pay during Short-Term Disability (STD)?

A 5.2 If the employee is otherwise eligible for holiday pay or a paid leave other than identified in §5253 (b) (4) of this title, the employee will be granted 100% pay on the day in question without a residual. All leave supplements will be calculated on a pay period basis. Example: An employee is receiving STD benefits on July 4th. The employee would receive 75% base wages STD and the 25% balance of the day would be paid holiday, no other leave would be charged for the day. No additional holiday hours would be paid or banked for the day.

Q 5.3 Leave Accrual during Short-Term Disability (STD). Will I accrue annual and sick leave while on Short-Term Disability (STD)?

A 5.3 Yes, you will accrue annual and sick leave at a 75% accrual rate if you do not use accrued leave to supplement your pay or you will accrue leave at a 100% if you make up the 25% difference with accrued leave.

Q 5.4 During Short-Term Disability (STD) can I use my accrued leave earned each month?

A 5.4 You have two basic options:

1. You may choose to use your monthly leave accrual consecutively starting on the 1st workday of the month to supplement the 75% STD with 25% available leave until the leave is exhausted. However, it must be utilized consecutively rather than on specific dates of your choosing that month; or
2. You may choose to retain your leave accrual and save it for payout at the time you go onto Long-Term Disability (LTD) or on a service pension. You may also choose to save your leave accrual for use after you return from STD.

If you choose Option #1 you will continue to receive 100% leave accrual and receive all holidays that occur during the month at 100%.

If you choose Option #2 you will accrue leave at 75% and receive holidays at 75%. (If on

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FMLA and/or Donated Leave you must comply with the rules that apply to those programs.)

Q 5.5 Leave Accrual during 20 calendar-day elimination period and start of Short-Term Disability (STD).

- A 5.5**
- a) If the employee is in a no pay status for the 20 calendar-day elimination period and the 20 calendar-day elimination period and the first 10 calendar days of STD both occur in the same month then the employee would receive a full accrual for that month. And if the employee does not supplement the 75% STD with 25% available leave the employee would receive a 75% accrual of leave for the subsequent months. The employee would receive a 100% accrual in subsequent months **only if** the employee opts to supplement the 75% STD with 25% available leave.
 - b) If the employee is in a no pay status for the 20 calendar-day elimination period and the 20 calendar-day elimination period and first 10 calendar days of STD span two different months the employee would receive a 100% leave accrual for the 1st month. And if the employee does not supplement the 75% STD with 25% available leave the employee would receive a 75% accrual of leave for the subsequent months.
 - c) **STD –Examples of 20 calendar-day elimination period and leave accrual—**
 - **The 20 calendar-day elimination period and first 10 calendar days of STD all occurring in the same month. Employee in a non-paid status for the 20 calendar-day elimination period on the 21st calendar day 75% STD begins and the employee does not supplement with 25% available leave:** Employee goes into a no pay status from September 1 to September 20 and on September 21 the employee receives 75% STD and does not supplement with 25% available leave. The employee would receive a full leave accrual for the month of September but for each subsequent month would receive a 75% accrual of leave.
 - **Employee in a non-paid status for the 20 calendar-day elimination period on the 21st calendar day 75% STD begins and the employee supplements with 25% available leave:** Employee goes into a no pay status from September to October 4 and the employee receives 75% STD and supplements with 25% available leave beginning October 5. The employee would receive a full leave accrual for the month of September and October and each subsequent month provided the employee continues to supplement the 75% STD with 25% available leave.
 - **The 20 calendar-day elimination period and first 10 calendar days of STD span two different months. Employee in a non-paid status for the 20 calendar-day elimination period on the 21st calendar day 75% STD begins and the employee does not supplement with 25% available leave:** Employee goes into a no pay status from September 15 to October 4 and the employee receives only the 75% STD beginning October 5. The employee would receive a full leave accrual for the month of September and 75%

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leave accrual for October and each subsequent month.

Q 5.6 Family Medical Leave (FMLA) during Short-Term Disability (STD). If I apply for Short-Term Disability (STD) do I still need to apply for Family Medical Leave (FMLA)?

A 5.6 Yes, the FMLA allows each employee who meets the eligibility requirements, job and medical benefits protection for a period of 12 weeks/year of unpaid leave. The law permits the employer to run the 12 week period concurrent with paid leaves if so stipulated.

STD pays the 75% of the employee's wages for up to 6 months and will run concurrent with FMLA.

Q 5.7 Short-Term Disability (STD) ends. What happens when my 6 months Short-Term Disability (STD) ends?

A 5.7 Upon the exhaustion of the maximum short-term disability benefit period, you shall no longer be an employee of the State or any of its political subdivisions. You have two options:

1. Escrow Leave--Prior to the commencement of LTD you may make written request to escrow your accrued annual and sick leave for a period of six months.
2. OR Payout of Leave--upon the commencement of long-term disability benefits you shall be eligible to receive a payoff of accrued unused sick leave based on the rules in place by the employer.

If you choose Option #1 your leave will be escrowed for a maximum period of 6 months. Once you have returned to full-time State employment in a benefit eligible position for 30 calendar days within the 6 month escrow period the leave balances will be returned. If you fail to return as stipulated your leave will be paid out based on the rules in place by the employer.

If you choose Option #2 upon commencement of approved LTD your leave will be paid out based on the rules in place by the employer. Should you subsequently return to full-time State employment in a benefit eligible position your leave balance will be zero.

LTD benefits pay 60% of your base wages to a maximum monthly payment \$8,000. You continue to earn pension creditable service, and if you choose to continue to participate in the State's health care, the State will continue to pay State Share or Double State Share on your medical insurance. You are no longer eligible for holiday pay, leave accrual or any other leave. NOTE: You will receive a 1099 form instead of a W-4.

Q 5.8 Annual Leave Carryover during Short-Term Disability (STD). Do I lose annual leave if I have excess annual leave to carryover into the new year due to being out on Short-Term Disability (STD) and unable to use enough annual leave before the end of the calendar year?

A 5.8 The provisions in Merit Rule 5.2.4 continue to apply Agencies may request approval from

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the Director to carry over annual leave in excess of the maximum amount.

Q 5.9 Donated Leave. Can I use Donated Leave during Short-Term Disability?

A 5.9 Donated Leave may be used during the 20 calendar-day elimination period of STD. However, regardless of whether a claim was filed with The Hartford in a timely manner, Donated Leave is not to continue following the 20 calendar-day elimination period until STD has been approved. Upon approval of STD the agency may apply Donated Leave retroactively for the 25% not covered by STD.

Q 5.10 If the employee is in a pending status with The Hartford, should we pay the employee using leave accrual or is the employee to be docked until we receive an approval from The Hartford?

A 5.10 Provided the employee filed their claim in a timely fashion (notified The Hartford within 15 calendar-days of the start of the absence) the employee may continue to use available sick/annual leave only. Upon approval of STD the agency may apply Donated Leave retroactively for the 25% not covered by STD (FAQ 5.9).

Q 5.11 When I am on FMLA and receiving STD am I required to supplement my 75% STD with 25% available leave?

A 5.11 While on FMLA you may only retain one week each of sick and annual leave, accruals that would exceed the allowable one week each of sick and annual leave must be used as earned. Once you have exhausted FMLA FAQ 5.4 applies.

Q 5.12 Is an employee returning to State employment from long-term disability (LTD) required to satisfy a new probationary period?

A 5.12 Yes--Merit Rule 9.5 states "Upon reinstatement, employees who left the Merit System shall be required to serve an initial **probation** period." This Merit Rule applies to all individuals being reinstated who left our employ including those who are returning from LTD.

Q 5.13 When is an employee returning to State employment from long-term disability (LTD) eligible for Donated Leave?

A 5.13 Since eligibility for Donated Leave is based on aggregate service if the employee has 6 months aggregate service with the State they would be eligible for Donated Leave immediately upon reinstatement. The absence itself must otherwise meet the criteria of an absence due to an illness of the employee or covered family member of greater than 5 weeks (or equivalent) and the employee has exhausted accrued sick leave and half of their annual leave (or all of annual leave if the absence is to care for a covered family member).

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Q 5.14 When is an employee returning to State employment from long-term disability (LTD) eligible for FMLA?

A 5.14 The employee is eligible upon meeting the standard FMLA eligibility requirements of:

- 12 months **aggregate** employment
- Have worked 1250 hours (State's interpretation of worked includes all paid time in the employ of the State) within the most recent twelve months;
- And has not exhausted their 12 week entitlement within the most recent rolling 12 month period.

Q 5.15 If an employee is rehired from Long-term disability in a Merit position on a reduced work schedule is the employee entitled to paid holidays and leave accruals?

A 5.15 If the reduced work schedule is expected and/or does exceed 30 calendar-days the employee should be considered permanent part-time for the purposes of holiday pay and leave accruals which shall be pro-rated based on scheduled hours. The status of permanent part-time would continue until such time as the employee is release to work normal workweek of 37.5 or 40.0 hours. For examples of holiday pay please refer those provided in the HR Procedures Manual at http://www.delawarepersonnel.com/policies/docs/hr_procedures_manual_091907.pdf. Leave would accrue based on percentage of whole.